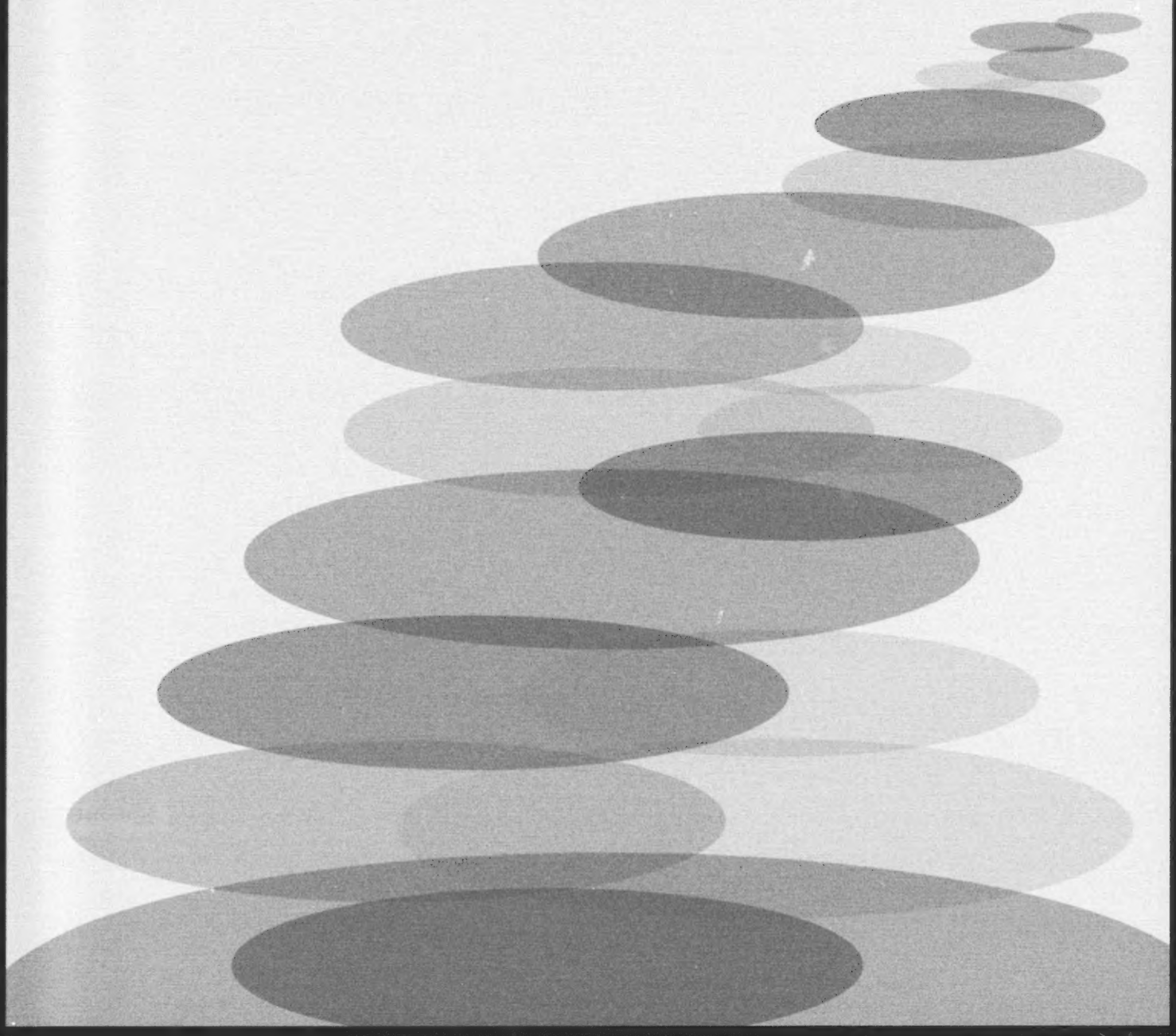
Ontario

Municipal-Aboriginal RELATIONSHIPS:

Case Studies



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Foreword

"The fundamental objective of the modern law of aboriginal and treaty rights is the reconciliation of aboriginal peoples and non-aboriginal peoples and their respective claims, interests and ambitions. The management of these relationships takes place in the shadow of a long history of grievances and misunderstanding. The multitude of smaller grievances created by the indifference of some government officials to aboriginal people's concerns, and the lack of respect inherent in that indifference has been as destructive of the process of reconciliation as some of the larger and more explosive controversies."

Justice Binnie, *Mikisew Cree* decision (2005, Supreme Court of Canada), *para.1*

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Introduction

Local governments' relationships with Aboriginal peoples are changing. Across Canada, municipal governments and neighbouring Aboriginal communities are developing stronger relationships. Together, they are creating opportunities to improve the quality of life for their residents.

Establishing and maintaining respectful relationships between all parties is essential to good municipal-Aboriginal relationships and is a basic principle of good municipal governance. By respecting each other's perspectives and developing relationships, municipalities and Aboriginal communities can build trust, address potentially challenging issues and act collaboratively to achieve social and economic well-being for all residents.

The special characteristics of Aboriginal communities make municipal-Aboriginal relationships unique. *The Constitution Act, 1982* recognizes the Aboriginal and treaty rights of Aboriginal peoples – which include Indians (more commonly referred to as 'First Nations'), Métis and Inuit. Recent court decisions have determined that these rights may trigger a duty to consult with Aboriginal communities in certain circumstances. If the Crown (federal, territorial, provincial) is considering a decision that may adversely affect established or asserted Aboriginal or treaty rights, the Crown has a duty to consult and, where appropriate, to accommodate the affected Aboriginal peoples.

The Ministry of Municipal Affairs and Housing's position is that municipalities have a duty to consult in some circumstances. This document is designed to help municipalities and their staff understand the opportunities and responsibilities to engage and consult with Aboriginal communities, and provides examples of current experiences.

Relevance to Municipalities

Aboriginal history is an integral part of the heritage of Ontario. The existing Aboriginal and treaty rights of Canada's Aboriginal peoples are recognized and affirmed in the *Constitution Act, 1982*. Aboriginal peoples participate in local economies and have interests such as community health, investment and growth. Engaging Aboriginal peoples should be part of a municipality's regular business practices.

Engaging Aboriginal communities has many benefits to First Nations, Metis and local governments, as can be seen in the case studies which follow. The case studies provide examples of opportunities where Aboriginal peoples and municipalities shared a mutual interest in the community. Early and frequent engagement with Aboriginal communities provides knowledge that can help in future decision-making.

Engaging Aboriginal communities

Engaging Aboriginal communities is different from engaging with others. Recognition of Aboriginal rights is enshrined in Canada's constitution. Aboriginal communities have different cultural and governance structures, and they may also differ from each other in many ways.

"In all its dealings with Aboriginal peoples, the Crown must act honourably, in accordance with its historical and future relationship with the Aboriginal peoples in question. The Crown's honour cannot be interpreted narrowly or technically, but must be given full effect in order to promote the process of reconciliation mandated by s. 35(1) [of the *Constitution Act, 1982*]."

Chief Justice McLachlin, *Taku River* decision (2004, Supreme Court of Canada), *para. 24*

Strong municipal-Aboriginal relations can assist in meeting a range of objectives, including identifying areas of mutual interest and developing joint initiatives, meeting regulatory requirements for community development, partnering on service delivery and resource management. Numerous municipalities across Ontario are already engaging Aboriginal peoples on a range of issues.

There are a number of matters in which local Aboriginal communities can be engaged. These matters could include:

- Land-use planning and development processes.
- Policy development and implementation.
- Preparation of archaeological master plans.
- Infrastructure planning and environmental assessment processes.
- Proposed changes to municipal boundaries.
- Policies related to cultural protection and development, i.e., protection of archaeological and burial sites.

There are a number of tools which municipalities could consider using, including:

- A shared services agreement with Aboriginal communities.
- A dispute settlement protocol which can be used when challenging issues arise during future discussions between a municipality and an Aboriginal community.

While there are broader issues around Aboriginal and treaty rights, and the Crown/Aboriginal relationship, finding ways to address local needs is also very important. Municipalities are well positioned to facilitate local solutions to local concerns.

Aboriginal and Treaty Rights

Understanding Aboriginal and treaty rights is important to forming partnerships with a local Aboriginal community.

Aboriginal and treaty rights have a long history in Canada. The *Constitution Act, 1982* recognizes these rights and identifies who holds them by defining Aboriginal peoples to include Indians, Métis and Inuit.

Part I
Section 25 of the Canadian Charter of Rights and Freedoms

25. The guarantee in this Charter of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada including

(a) any rights or freedoms that have been recognized by the Royal Proclamation of October 7, 1763; and

(b) any rights or freedoms that now exist by way of land claims agreements or may be so acquired.

Part II
Rights of the Aboriginal Peoples of Canada

35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit, and Métis peoples of Canada.

(3) For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

Aboriginal and treaty rights are collective rights, meaning that they are held by the community rather than the individual.

Established Rights and Asserted Rights

It is important to be aware of both established rights and asserted rights. Established rights include the rights that have been recognized in an existing treaty or court decision. Rights claimed by Aboriginal peoples that are not recognized in such a way are known as asserted rights. These may often include assertions related to land and/or hunting and fishing but may also include other matters. New assertions may arise at any time, which is one of many reasons why Aboriginal engagement processes need to be flexible and responsive to changes in circumstances.

Aboriginal Rights

For an activity to be an Aboriginal right, it must be an element of a practice, custom or tradition which is integral to the distinctive culture of the Aboriginal community claiming the right.

- For First Nations and Inuit communities, the activity must have existed at the time of first contact with Europeans.
- For Métis communities, the activity must have existed prior to the time of effective European control.

In both instances, the current practice, custom or tradition must have continuity with the historic practice, custom or tradition, and it must remain integral to the community's culture. Present-day activities may be the modern form of a historical practice, custom or tradition.

Aboriginal rights may be modified or surrendered through treaties. The impact of a treaty on Aboriginal rights will depend on the interpretation of the particular treaty.

Treaty Rights

Treaty rights are the rights that Aboriginal communities have as a result of special agreements entered into with the Crown. For example, a treaty may recognize the signatory Aboriginal communities' rights to hunt, fish and trap.

In reviewing treaties, municipalities should consider how the treaties may have been understood by the Aboriginal peoples who signed them. Municipalities could obtain information directly from potentially affected Aboriginal communities and could examine historical documentation.

Municipalities may also wish to consult their lawyers for advice regarding how case law or a particular treaty may apply to their situation. Effective engagement and partnership with local Aboriginal communities is more likely to succeed if the relevant Aboriginal and treaty rights are understood by all parties.

Case Studies

Across Canada, there are a number of examples of successful Aboriginal-municipal relationships and the following case studies highlight some of the experiences in Ontario. It should be emphasized that the unique experiences of each municipality and local Aboriginal communities will play a role in shaping engagement. The following section sets out a few instances where municipalities and Aboriginal communities have found innovative ways to work together.

Case Study: Teston Site Ossuary, York Region

Parties: York Region, City of Vaughan, Huron-Wendat Nation, Mississaugas of Scugog Island First Nation, Six Nations of the Grand River

In August 2005, the excavation for widening Teston Road uncovered human remains under the original Teston Road pavement. York Regional Police and the Office of the Chief Coroner investigated the discovery and concluded that there was no recent forensic interest. The site was released back to York Region, which informed the Cemeteries Branch of Ontario's Ministry of Government Services and the Mississaugas of Scugog Island First Nation (the geographically closest First Nation) of the discovery. Recognizing the possibility that other First Nations with a closer affiliation may have an interest in the burial site, contact was also made with the Huron-Wendat Nation and Six Nations of the Grand River.

An archaeological investigation was commissioned by York Region. The purpose of the archaeological investigation was to determine the likely origins of the burial site, including an estimation of the age and number of persons interred, and their cultural affiliation. As part of the investigation, more than 20,000 pieces of human remains that had been displaced during the initial discovery of the Teston Site Ossuary were recovered.

A report summarizing the findings of the investigation was submitted to the Registrar of Cemeteries. The Registrar of Cemeteries Declaration recognized that the ossuary contained remains of ancestors of the Huron Wendat Nation, the Mississaugas of Scugog Island First Nation, the Six Nations of the Grand River and various Anishnabeg communities of the north shore of Lake Ontario.

The first formal meeting was held in November 2005. There was a consensus among the First Nations that the Teston Site Ossuary should remain in its original location and the road be realigned. Recognizing the historical and cultural significance of the Teston Site Ossuary, York Region began investigating how this could be accommodated. After conducting technical studies and discussions with the First Nations, neighbouring residents and the City of Vaughan, the site was redesigned. The disturbed portion of the Ossuary was to be reconstructed to reflect its original layout and to allow the displaced remains to be returned to their original burial site.

In May 2006, the redesign was completed and submitted to the First Nations for their review. In July 2006, York Region met again with the First Nations, neighbouring residents and the City of Vaughan. There was consensus approval of the redesign and York Region began implementing the changes.

Case Study: Teston Site Ossuary, York Region – *continued*

By December 2006, the road construction was complete and fully opened to traffic. The Teston Site Ossuary was protected and in May 2007, the First Nations communities came together to bury the displaced remains. They conducted a traditional, culturally appropriate ceremony which included lining the bottom of the ossuary with animal skins and burning sage. Ceremonies were performed by Elders and spiritual leaders.

This example demonstrates the importance of communication and the willingness of all parties to work together. The Region identified an Aboriginal concern, conducted research, contacted the affected parties, and then each party worked towards finding a resolution. Aboriginal traditions were respected and the Region also worked closely with the affected lower tier municipality and residents.

Case Study: Town of Midland

Parties: Town of Midland, Huron-Wendat Nation, Beausoleil First Nation

In 2003, during site preparation for construction of a municipal community centre, workers unearthed human remains and the Town immediately ceased work. The Town's museum curator, having identified the site as a potential Aboriginal ossuary, contacted the closest Aboriginal community. The Town began discussions with First Nations on how to go about protecting and preserving the land.

A consultation with the First Nations led to the implementation of protection and preservation measures. The First Nations participating in the discussions were the Beausoleil First Nation, which is located near Midland on Christian Island, as well as the Huron-Wendat Nation. The Huron-Wendat Nation was known to have occupied the area and it is believed that Huron-Wendat ancestors were buried in the ossuary. The protection and preservation measures were designed to ensure that future generations can access the site. The mayor and municipal council provided staff with full financial and political support to move ahead on this project.

During this consultation, the Town followed the guidance of a First Nations Elder. A privacy barrier was erected and security guards were hired to protect the site from damage. The Town recovered the distributed remains and stored them until the site was stabilized. In 2003, the Town supported the First Nations in the reburial ceremony. In consultation with the First Nations, the Town landscaped the area and erected a commemorative stone. The site has since been declared an Aboriginal peoples' cemetery.

The quick action on the part of the Town to recognize the importance of the site and to notify its neighbouring Aboriginal community was important to the building of good relations between the parties. The Town provided some financial support for costs incurred by the First Nations. In this case, leadership and a respectful approach resulted in a cooperative and constructive consultation with positive outcomes.

Case Study: Town of Midland – *continued*

"Although a result of an unfortunate incident, the outcome has led to positive discussions and sharing of cultures between the Town and First nation groups. No lawyers were involved and a resolution was amicably agreed to by all parties involved. The preservation of the ossuary and identification of the site holds enormous significance to the First Nations. There was a building of relationships between First Nations and the Town; it raised public awareness and has put in place a stewardship of land developments and controls; and has resulted in the step up of archaeological assessment."

– Fred Flood – "Ontarajia: A Huron Wendat Ossuary" – The Association of Professional Archaeologists, 2007-01 Winter Edition

Case Study: Common Ground Working Group with Abitibi-Consolidated – Kenora, Ontario

Parties: City of Kenora and The Grand Council of Treaty #3, as led by Wauzhusk Onigum, Ochiichagwe 'Babigo' Ining and Obashkaandagaang Bay First Nations; with contribution from Abitibi-Consolidated Ltd.

In 2001, the leaders of the Grand Council of Treaty #3 and the City of Kenora created the Common Land, Common Ground initiative as a way for First Nations and municipal governments to discuss areas of mutual concern. The initiative was based on the idea that governments whose people share a territory and its resources should create and maintain ways to live and work in harmony. Both municipal and First Nations leaders realized that an ongoing, constructive relationship could help avoid potential disputes in the future.

In 2004, the community became aware of the Rat Portage historic site, a key link in the trans-Canada canoe route. This portage had been the path shared by all peoples over thousands of years. There was a clear and profound Aboriginal tie to the site and 'ownership' could have been contentious. However, in the spirit of the Common Land, Common Ground initiative, and in respect for the 'shared path', both the City of Kenora and the First Nation leaders resolved to move forward as equal partners in the management of the site.

The future of some nearby lands was also a delicate situation. Tunnel Island, owned by Abitibi-Consolidated, was 370 acres of undeveloped land that was considered to be valuable, and which contained evidence of over 8,000 years of continuous human occupation. With the closure of its mill, Abitibi was divesting itself of its holdings in Kenora and both the City and First Nations expressed their interest in these heritage lands.

Case Study: Common Ground Working Group with Abitibi-Consolidated – Kenora, Ontario *– continued*

In a two-day facilitated meeting, leaders and Elders from the Grand Council, the three First Nations, municipal leaders and representatives of the company discovered they had a common vision, shared principles and connections to the Tunnel Island land. They emerged describing a renewed partnership: one of alliance and sharing between peoples, which was the original intent of the treaty.

When the First Nations and municipality committed to collaborate on the management of the Rat Portage, Abitibi indicated that it might grant the Tunnel Island land to such a partnership. By the fall of 2006, a formal memorandum between the First Nations, the municipality and the company was in place. It dedicated the land to all the people under joint management, so the land would be "Common Ground" forever.

The land is jointly managed by the Common Ground Working Group (CGWG) which is composed of the City of Kenora, Grand Council Treaty #3 and the three First Nations that formed the original Rat Portage Band: Wauzhusk Onigum, Ochiichagwe 'Babigo' Ining and Obashkaandagaang Bay, as well as assisted by the federal and provincial governments. The CGWG makes decisions through consensus and respects the due processes required of both the Aboriginal and non-Aboriginal systems. All members of the group, as well as the public, shared in the traditional Anishnabeg ceremonies to honour the land and the waters on which everyone depends.

The CGWG has gone a long way to build on the commonalities between the First Nations and municipality. However, its process is very careful to respect and even celebrate its members' differences. The CGWG's success demonstrates the value of having consistent working relationships in place to handle issues of mutual concern between municipal governments and First Nations. As seen by Kenora's experience, when different communities join together to tackle shared issues, they are likely to find mutually beneficial solutions and new opportunities for collaboration.

The Common Ground Working Group has presented its work to a wide range of audiences and continues to be interested in sharing its approach with others.

"I am honoured to be present [at the signing of this agreement] as we take our first formal steps together down the shared path of our Common Ground." – Len Compton, Kenora Mayor

Case Study: Elliot Lake – Serpent River First Nation MOU

Parties: City of Elliot Lake, Serpent River First Nation

On September 4, 2007, a ceremony was held for the official signing of a Memorandum of Understanding (MOU) between the Serpent River First Nation (also known as the Anishinabek of Genaabaiging) and the City of Elliot Lake.

Case Study: Elliot Lake – Serpent River First Nation MOU – *continued*

The MOU affirms collaboration between the First Nation and the City through a Joint Relations Committee (JRC), which focuses on five key priorities:

- Economy / employment / procurement.
- Heritage planning and sharing of resources.
- Mutually beneficial supported initiatives, programs, and services.
- Land use and acquisition.
- Joint lobbying and communications with other governments.

The MOU also notes that these priorities are subject to change and may be updated.

The JRC initiative began in February 2006. The committee is composed of members from both the Serpent River First Nation and the City of Elliot Lake. The JRC's responsibilities include providing information, options and recommendations to their respective councils for action or resolution.

The committee's terms of reference states that both parties recognize a need for collaboration to rebuild the economy of the area. It highlights the shared principle that replacing an ad-hoc relationship with a formal joint relations committee will increase economic opportunities and ultimately provide a discussion venue for the two communities.

The creation of the JRC is a proactive measure that recognizes the long-standing common interests of the two communities. It provides a stable forum for identifying and understanding concerns, working towards solutions and promoting the economic and social well-being of the communities.

"Today we are celebrating the beginning of a new, constructive relationship. It will be a template for future successful agreements between other First Nations in Ontario and their neighbours."

– Mayor Rick Hamilton, City of Elliot Lake - Report by the Joint Relations Committee – Sept.4, 2007.

Case Study: Belle Island and Kingston's Future Aboriginal Relationships

Parties: City of Kingston, the Six Nations of the Grand River, the Algonquins of Ardoch, the Algonquins of Sharbot Lake, the Algonquins of Pikwàkanagàn, the Mohawk Council of Akwesasne, the Mohawks of the Bay of Quinte and the Huron-Wendat of Wendake

In 1988, human remains were discovered on Belle Island, a 37.5 acre parcel of land in the Great Cataraqui River. The City of Kingston recognized the historical importance of the island and recommendations were made to do further work on the more recent remains. A year later, City council passed a resolution that portions of the island be registered as a cemetery.

Case Study: Belle Island and Kingston's Future Aboriginal Relationships – *continued*

In 2000, the remains were interred and an archaeological assessment of the site was conducted. The following year, City council passed a resolution recognizing that Belle Island contained First Nations cultural heritage resources and began consultations with local First Nations. Discussions regarding the history and protection of the site took place from 2001-2005 among the Belle Island parties. Notices of the discussions were also given to various federal and provincial departments and agencies.

In the fall of 2006, City council approved a strategy of specific actions and commitments to protect the site, which was established through discussions with local First Nations. This strategy included:

- Establishing an implementation team composed of three staff members representing the City of Kingston and three representatives from the First Nations, to undertake the elements of this proposed strategy.
- Agreeing that the island should remain under the land use jurisdiction of the City and that the City should retain responsibility for insurance, services and security, as may be required.
- Creating a plan for the future use of the island to enhance its natural grace and dignity.
- Agreeing to impose land use planning restrictions to ensure the future protection of the island and its natural and human values.
- Taking steps to set the island apart physically (i.e., limiting routes of access to the island).

Aboriginal Relationships after Belle Island

Out of the Belle Island experience, the City of Kingston determined that it needed to address Aboriginal interests as part of its normal business practices. The City committed to engaging with Aboriginal peoples in two ways:

- Provide early notice and documentation of land use plans to a wide range of Aboriginal communities.
- Consult more specifically on identified future projects.

The City's approach to including Aboriginal peoples in its business will develop and evolve as the City gains experience in sharing and gathering information with all Aboriginal groups. A significant step that will inform future decision-making processes is the development of an archaeological master plan by the City of Kingston.

The collaboration of the City of Kingston and the First Nation communities is an example of what is hoped will be a developing and meaningful municipal-Aboriginal relationship. The relationship developed by the implementation team, which had been established to address the Belle Island issue, should help future consultations between the City and Aboriginal peoples.

Overall Lessons Learned

- It makes good sense to engage early and build relationships with Aboriginal communities.
- Be proactive in establishing municipal-Aboriginal relationships.
- Early and frequent engagement with Aboriginal communities provides knowledge that can help in future decision-making.
- Recognize and respect that building municipal-Aboriginal relationships may take time. Be aware that there are many competing demands for communities with limited resources.
- Be mindful that Aboriginal communities may be dealing with many notices from various organizations and governments.
- Understanding differences is important – Aboriginal communities are not municipalities or stakeholders.
- One size does not fit all – there are variations in municipal and Aboriginal governance models, so any engagement process must be flexible.
- Numerous municipalities across Ontario are already engaging with Aboriginal peoples on a range of issues.
- The engagement process should aim to develop a common understanding of shared interests, concerns, expectations and responsibilities.
- Formal and stable processes, such as joint relations committees, are useful tools to promote understanding and cooperation and to develop mutually beneficial solutions.
- It is important for parties to share their perspectives on the potential impacts of a proposed project/decision on treaty and Aboriginal rights.

Selected Resources

- Indian and Northern Affairs Canada
  (www.ainc-inac.gc.ca)
  - Contains information such as:
    - The status of specific claims.
    - First Nation profiles.
    - Treaty information, including mapping.
  - Contact INAC directly for information on specific claims, comprehensive claims, litigation matters and other relevant information.

- Ontario Ministry of Aboriginal Affairs
  (www.aboriginalaffairs.gov.on.ca)
  - This site brings together information on Aboriginal affairs in Ontario, including information on:
    - The role of the Ministry of Aboriginal Affairs.
    - Land claims.
    - Building partnerships.

- Aboriginal Canada portal
  (www.aboriginalcanada.gc.ca)
  - A site created through a partnership of government departments and Aboriginal communities, that serves as a window to Aboriginal peoples online resources and government programs and services.

- Federation of Canadian Municipalities: Land Management Project
  (http://www.fcm.ca/english/View.asp?mp=532&x=790)
  - The Federation of Canadian Municipalities, in partnership with several Aboriginal organizations and the federal government, developed the Land Management Project. This initiative encourages communication, understanding and cooperation between Aboriginal peoples and municipal governments in the areas of land management and social and economic development.
  - The website includes a toolkit, best practices, a community resource guide and news on upcoming workshops.

- Aboriginal communities
  - Aboriginal communities may provide further information and resources.

- Chiefs of Ontario
  (http://www.chiefs-of-ontario.org)
  - The website for a coordinating body for First Nations located within the Province of Ontario.

- Métis Nation of Ontario
  (www.metisnation.org)
  ⁕ A site containing a variety of Métis specific information.

- CivicNet BC's Resources on Aboriginal peoples Issues
  (www.civicnet.bc.ca/siteengine/activepage.asp?PageID=10&bhcp=1)
  ⁕ While the operating environment of BC municipalities is different, the section on Relationship Building and Dispute Resolution offers many documents that highlight best practices.

- Supreme Court decisions available at
  (scc.lexum.umontreal.ca/en/index.html)

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Contact Information

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Central Municipal Services Office (Toronto)

General Inquiry: 416-585-6226
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Servicing: Durham, York, Peel, Halton, Simcoe, Muskoka, Dufferin, Niagara, Hamilton, Toronto

Eastern Municipal Services Office (Kingston)

General Inquiry: 613-545-2100
Toll Free: 800-267-9438
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Northeastern Municipal Services Office (Sudbury)

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